

***United States Court of Appeals
for the Second Circuit***



APPENDIX

*Original with Affidavit of
Mailing*

75-1119

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p175*

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-1119

UNITED STATES OF AMERICA,

Appellee,

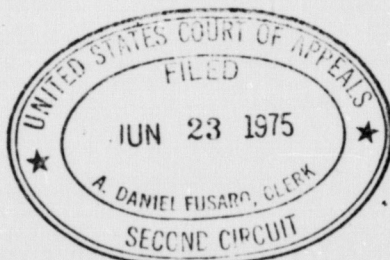
—against—

JOSE JAHIR URIBE,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX



DAVID G. TRAGER
*United States Attorney,
Eastern District of New York.*

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GOVERNMENT'S MEMORANDUM OF LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

73 CR 74

-against-

JOSE JAHIR URIBE,

Defendant.

----- X

GOVERNMENT'S MEMORANDUM OF LAW

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CAROL B. AMON
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(Of Counsel)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 2

----- X
UNITED STATES OF AMERICA

73 CR 74

-against-

JOSE JAHIR URIBE,

Defendant.
----- X

GOVERNMENT'S MEMORANDUM OF LAW

Respectfully Submitted,

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PRELIMINARY STATEMENT

A

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This memorandum is submitted in support of the proposition that the Government should be permitted to introduce into evidence a tape recording made of a conversation in which a Government informant, an undercover Government agent and the defendant participated on February 26, 1973, along with a transcript of that recording. This conversation the greater part of which was conducted in the Spanish language occurred contemporaneously with the sale of the four firearms with which the defendant is charged. Interspersed with discussion about the subject firearms are references to ongoing negotiations among the same three individuals for the sale of narcotics and machine guns.

Specifically, this memorandum deals with issues of audibility, the admissability of the transcript of the tape recording and the admissability of those portions of the conversation dealing with narcotics and machine guns.

STATEMENT OF FACTS

The Government expects to set forth the following facts at the audibility hearing through the testimony of Government Agent Anthony Bocchichio.

On February 26, 1973, Undercover Agent Anthony Bocchichio of the Bureau of Customs met and had a conversation

with the defendant and a Government informant in the vicinity of 88th Street and Astoria Boulevard in Jackson Heights, New York. At that time, Agent Bocchichio was wearing a Kel, a battery-operated device which picks up and transmits audio emissions within its range. Nearby surveillance agents were equipped with receiving and recording apparatus. The tape in question is a recording made of the transmissions received by those agents from the Kel worn by Agent Bocchichio on that date and in that location.

I. Minor Inaudible Portions in the Tape Recording of the February 26, 1973 Conversation Do Not Affect the Admissibility of that Tape Recording.

The mere fact that there are some inaudible portions of a tape recording does not require that the tape recording be excluded from evidence. United States v. Bryant, 480 F.2d 785, 790 (2d Cir. 1973). The Second Circuit in Bryant adopted the following standard for admissibility: "Unless the unintelligible portions are so substantial as to render the recording as a whole untrustworthy the recording is admissible". Bryant, supra at 790.* This decision is

* This standard was quoted by the Second Circuit in Bryant from language cited in Monroe v. United States, 234 F.2d 49,55 (D.C. Cir. 1956).

left to the sound discretion of the trial judge. Bryant, supra at 790. See also, United States v. Kaufer, 387 F.2d 17, 19 (2d Cir. 1967); United States v. Knohl, 379 F.2d 427, 440 (2d Cir. 1967).

In the instant case, there are at most two or three inaudible phrases in the entire conversation. At no point is the chain of conversation broken. Clearly, these few unintelligible portions of the tape cannot be considered so substantial as to render the tape recording as a whole untrustworthy.

II. A Prepared English Transcript of the Recorded Conversation of February 26, 1973 Should Be Admitted as an Aid to the Court and Jury.

A transcript is no different in principle than charts, graphs, photographs or mechanical models, all of which may properly be introduced to illustrate matters already in evidence and to expedite the trial by assisting the jury in following the evidence. United States v. Bryant, 480 F.2d 785, 791 (2d Cir. 1973); United States v. Koska, 443 F.2d 1167, 1169 (2d Cir. 1971); United States v. Hall, 342 F.2d 849, 852-853 (4th Cir.), cert. denied, 382 U.S. 812 (1965). A transcript is an indispensable aid to the jury in this case where more than half of the conversation is in the Spanish language.

The Government will call as a witness at trial the Government undercover agent who will identify the voices on the tapes. It is anticipated that the translator who prepared the transcript will also be called. The Government has provided defense counsel with a copy of the tape and a draft of the transcript well in advance of trial. Possible dispute as to the accuracy of that transcript should not bar introduction of the Government's proposed transcript since it can be attacked on cross-examination and the defense has the opportunity to offer their own proposed transcript for the jury's consideration. United States v. Carson, 464 F.2d 424, 436-437 (2d Cir. 1972), cert. denied, 409 U.S. 949 (1972).

III. Those Portions of the Recorded Conversation of February 26, 1973 between the Government Agent and the Defendant Which Deal with Ongoing Negotiations for the Sale of both Narcotics and Machine Guns Are Relevant to the Offense Charged.

The Second Circuit rule with respect to evidence of other crimes is that such evidence is admissible except when offered solely for the purpose of proving criminal character. United States v. Deaton, 381 F.2d 114, 117 (2d Cir. 1967). In the instant case, evidence of contemporaneous negotiations for the sale of narcotics and machine guns is substantially

relevant for a number of purposes, apart from simply establishing the criminal propensity of the defendant.

First of all, proof of other crimes is admissible if it is a necessary part of completing the story of the crime charged--if it is closely connected with the time, scene or circumstances of the subject crime.* McCormick, Evidence, §190 at 448 (2d ed. 1954). In the instant case, the discussion of the sale of both the narcotics and machine guns is intimately connected with the offense charged. The defendant discusses the machine guns and narcotics in the very same conversation wherein the sale of the firearms is accomplished. A complete account of that conversation is required to understand what transpired. United States v. Bozza, 365 F.2d 206, 214 (2d Cir. 1966). In Bozza, appellant objected to the admission into evidence of the testimony of an accomplice wherein in recounting a crucial conversation with the defendants involving the initiation of the burglaries charged in the indictment he testified that they discussed an earlier burglary not charged. The Court held that the reference to the first burglary was admissible on the theory, inter alia, that the "principle of completeness" justified telling all that was said by the defendants in that conversation on that occasion.

* This principle is sometimes expressed in terms of establishing the "res gestae" of the offense.

Bozza, supra at 214. To delete references to either the narcotics or the machine guns in this instance would be to violate this principle and to provide the jury with the very type of "truncated evidence" condemned by the Second Circuit. Bozza, supra at 213; United States v. Cohen, 384 F. 2d 699, 700 (2d Cir. 1967). In Cohen, the Court held that testimony concerning an agreement made by defendants to accept illegal payments in 1955 was admissible as the inception of the very course of dealing pursued in the crime charged, that of accepting such payments in 1958 and 1959. Citing its opinion in Bozza, supra the Second Circuit stated that if the Government had been forced to start with the later conversations, the jury would have obtained only a "truncated version of what was claimed to have occurred." Cohen, supra at 699. See also, United States v. Barash, 365 F.2d 395, 403 n. 10 (2d Cir. 1966), cert. denied, 396 U.S. 832 (1969). The sale of the firearms with which the defendant is charged did not take place in a vacuum. To provide a complete account of the offense and to explain the defendant's association with it, necessarily involves testimony concerning the machine guns and narcotics. See, Turner v. United States, 423 F.2d 481, 484 (7th Cir.), cert. denied, 398 U.S. 967 (1970); United States v. Crowe, 188 F.2d 209, 212 (7th Cir. 1951); Schwartz

v. United States, 160 F.2d 718, 721 (9th Cir. 1947).

A second important purpose for which proof of other crimes is admissible is to establish the criminal intent of the defendant as to the offense charged. The fact that defendant was enmeshed with the same parties at the same time in the sale of narcotics and the sale of machine guns is unquestionably relevant to the issue of his intent and knowledge in the sale of the handguns. Such activity tends to prove that the sale of the guns was not somehow an unknowing innocent act. United States v. Brettholz, 485 F.2d 483, 488 (2d Cir. 1973) (ten prior sales of cocaine held relevant to rebut defendant's claim that on the occasion in question he intended to buy marihuana instead of cocaine); United States v. Stadter, 336 F.2d 326, 329 (2d Cir. 1964), cert. denied, 380 U.S. 945 (1965) (testimony concerning defendant's initial dealings involving marijuana held to be relevant to the issue of intent on the substantive offense of selling heroin). Since the burden of proving intent and knowledge is on the Government, prior criminal activity relevant to establish these elements is admissible on the Government's direct case. United States v. Gardin, 382 F.2d 601, 603 (2d Cir. 1967).

Finally, assuming that the defendant raises the defense of entrapment, evidence of his prior and contemporaneous dealings for machine guns and narcotics is highly relevant to

establish his predisposition to commit the offense charged. The Supreme Court in Sorrells v. United States, 287 U.S. 435, 451 (1932) stated ". . . if the defendant seeks his acquittal by reason of entrapment he cannot complain of an appropriate and searching inquiry into his own conduct and predisposition as bearing upon that issue. If in consequence he suffers a disadvantage, he has brought it upon himself by the nature of the defense." This principle was recently reaffirmed by the Court in Osborn v. United States, 385 U.S. 323, 332, n. 11. (1966). There is no requirement that the prior offenses elicited to negate entrapment be identical to that with which the defendant is charged. United States v. Becker, 62 F.2d 1007, 1009 (2d Cir. 1933). Moreover, if the Government has reasonable grounds to anticipate the defense of entrapment, evidence of prior and contemporaneous criminal activity is properly admissible in the Government's direct case. United States v. Cohen, 489 F. 2d 945, 950 (2d Cir. 1973).

Here, on the issue of entrapment, the specific conversation concerning the machine guns and narcotics has a particular significance in rebutting this defense apart from the general concept that a defendant who is contemporaneously dealing in narcotics and machine guns would be predisposed to sell handguns. The tape clearly indicates that Agent Bocchichio on at least two occasions stated that he was not particularly interested in buying the handguns but was doing so

only to keep his ultimate customers for the narcotics and machine guns happy. Thus, Bocchichio's comments concerning the machine guns and narcotics are relevant to establish that he neither compelled nor even persuaded the defendant to sell him the handguns, but that the defendant did so of his own free will. Furthermore, such comments shed light on the motive of the defendant to sell handguns to Agent Bocchichio in particular. The defendant's motive in selling was the same as that feigned by Agent Bocchichio for buying, namely to keep his customer for more lucrative items, interested. See, United States v. Crisona, 416 F.2d 107 (2d Cir. 1969), cert. denied, 397 U.S. 961 (1970).

CONCLUSION

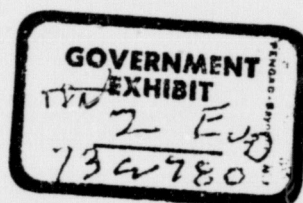
The entire tape recording of the February 26, 1973 conversation together with a transcript of that recording is admissible evidence at trial.

Respectfully Submitted,

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GOVERNMENT'S TRIAL EXHIBIT 2



TRANSCRIPTION AND TRANSLATION OF A CONVERSATION BETWEEN

- TONY BOCCHICHIO
- AUGUSTO SANCHEZ
- JOSE JAHIR URIBE

on February 26, 1973

(IN ENGLISH)

TONY BOCCHICHIO You made me wait almost an hour.

AUGUSTO SANCHEZ I am sorry, but you know this....

TONY BOCCHICHIO I have other things to do you know, Augie, You've got to be on time.

AUGUSTO SANCHEZ Yeah, I know Tony, I'm sorry but...

PAUSE

JOSE JAHIR URIBE &
TONY BOCCHICHIO

(simultaneously) How are you?

TONY BOCCHICHIO Fine, and you?

JOSE JAHIR URIBE Fine, too.

TONY BOCCHICHIO What happened to the other thing?

AUGUSTO SANCHEZ Is here.

TONY BOCCHICHIO Is it the same as the one you showed me?

AUGUSTO SANCHEZ Yeah, but is only, only three.

TONY BOCCHICHIO You know, they are pretty shitty for the price but because of the other thing that...ah... all right.

AUGUSTO SANCHEZ
(in Spanish) He says that they are expensive for what they are (inaudible) no? But since he is going to do the other business with the...

JOSE JAHIR URIBE
(in Spanish) Oh yes, no, tell him if he is interested, because ~~there are one or two~~ I am knocking my...to get... one or two...

AUGUSTO SANCHEZ He says, the other...

JOSE JAHIR URIBE Yes

AUGUSTO SANCHEZ
(In English) He says yes, this week we have two - one or two, because...

TONY BOCCHICHIO Alright, well, what about the other stuff?, the stuff we talked about long ago.

AUGUSTO SANCHEZ
(In Spanish) Oh, he is talking about the sample...

JOSE JAHIR URIBE
(in Spanish) Oh, the sample, tell him we are already waiting for the person coming from Colombia.

AUGUSTO SANCHEZ
(In English) He is waiting for the person to come ⁱⁿ from Colombia. He say...

JOSE JAHIR URIBE
(in Spanish)
(in English) He is coming already. We are waiting for Diaz, it is a matter of days, of days. Only a few days.

AUGUSTO SANCHEZ
(in English) Only for a few days.

TONY BOCCHICHIO
You have been telling me that all the while, a day, two days, I tell the guy I am going to show him, I got the sample and..ah..that..ah..that's the thing, the only thing, I'm keeping the guy interested because I tell him I can get him this and..ah..some others, cause he's the same guy takes both, you know?

AUGUSTO SANCHEZ
(in Spanish)
He says he has.. the other guy waiting.

JOSE JAHIR URIBE
(in Spanish)
Yes, waiting, yes.

AUGUSTO SANCHEZ
(in Spanish)
That is the same guy who is going to buy...

TONY BOCCHICHIO
This is just, for ..er..ah..there..ah..I don't give a shit about this, this is just to keep them happy, you know.

JOSE JAHIR URIBE
Hum..

AUGUSTO SANCHEZ
(in Spanish)
He says...

JOSE JAHIR URIBE
(in Spanish)
Keep them happy.

(IN ENGLISH)

TONY BOCCHICHIO
They're looking for the other things, that you are supposed to have this week, right, all right. So how much are these?

JOSE JAHIR URIBE
(in English)
for the.. a hundred, a hundred twenty...

AUGUSTO SANCHEZ
a hundred twenty for..ah..this one, two, one here is three.

JOSE JAHIR URIBE
Three more

AUGUSTO SANCHEZ
And this is other. Oh, I'm sorry.

TONY BOCCHICHIO
Don't take that.

AUGUSTO SANCHEZ
Another kind.

TONY BOCCHICHIO
Alright give me that one.
How much, well, well how much is everything?
Just leave it here, just leave it on the seat.

AUGUSTO SANCHEZ
This is one hundred and fifty.

TONY BOCCHICHIO
What kind is that?

AUGUSTO SANCHEZ
It is a twenty-two revolver.

TONY BOCCHICHIO
A revolver, I do not want a rev..., alrightwell, how much for everything?

JOSE JAHIR URIBE
He give three, he say he give you one.

TONY BOCCHICHIO
Yeah, here it is four.

JOSE JAHIR URIBE
Four. Okay, it is one hundred and eighty, forty-eight.

AUGUSTO SANCHEZ
Four hundred and eighty dollar.

P A U S E
You know, you know, you know, what this is (regular)

JOSE JAHIR URIBE
(in ENGLISH)

(In English)

TONY BOCCHICHIO	I give you...
JOSE JAHIR URIBE	You, you, you see
TONY BOCCHICHIO	Well, I don't want all that, I give you - how much for the revolver. One hundred and twenty for the other one, too. Alright - I give you - I'll take all of them.
AUGUSTO SANCHEZ (in Spanish)	He says he is going to give you one hundred and twenty for all of them.
JOSE JAHIR URIBE (in Spanish)	Yes, it is okay, it is better.
TONY BOCCHICHIO	So there are four here and one is five, right? For six hundred.
JOSE JAHIR URIBE (in English)	Six hundred, okay.
TONY BOCCHICHIO	One, two three,,,
	NOISES LIKE PAPER BEING HANDLED
JOSE JAHIR URIBE (in Spanish)	...pay more...
AUGUSTO SANCHEZ (in Spanish)	Oh good.
TONY BOCCHICHIO	How much for the others? How much for the machine gun?
JOSE JAHIR URIBE (In English)	Eh...four hundred.
AUGUSTO SANCHEZ (in English)	Is four hundred.
JOSE JAHIR URIBE (in English)	(Inaudible)
TONY BOCCHICHIO	What kind?
AUGUSTO SANCHEZ (In English)	He don't know.
JOSE JAHIR URIBE (in English) (in Spanish)	I don't know, I guess that, what machine brand...
AUGUSTO SANCHEZ (in Spanish)	Well, however it is they come, brother.
TONY BOCCHICHIO	In good condition?
JOSE JAHIR URIBE (in Spanish)	Very well.
AUGUSTO SANCHEZ (in English)	New one.

TONY BOCCHICHIO
JOSE JAHIR URIBE
(In English)
TONY BOCCHICHIO
JOSE JAHIR URIBE
(in English)
TONY BOCCHICHIO
JOSE JAHIR URIBE
(in Spanish)
AUGUSTO SANCHEZ
(in English)
TONY BOCCHICHIO
JOSE JAHIR URIBE
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TONY BOCCHICHIO
JOSE JAHIR URIBE
(in English)
AUGUSTO SANCHEZ
(in English)
TONY BOCCHICHIO
JOSE JAHIR URIBE
(in Spanish)
AUGUSTO SANCHEZ
(In English)

No shit! No. No. Shit. It's got to be, no.
Not a new one.
Alright
No new one.
Augie told me...
Tell him the next time that if he can, not to
give me new bills.
The next he don't want a new bills.
Oh, alright, that I had in my pocket.
Okay.
What does he say about the bills?
No, that's no that's...
No, I know okay.
That's not special, I just had it in my pocket.
Okay
But...
(unintelligible) - one thing...
But what about the sample I want that sample of the
other stuff.
May be next week, next week.
And the others, this week?
The others, this week, this week.
All right but do not keep me waiting. When you give
me a time, I do not like this place.
Okay.
When you give me a time, you tell me the time
I do not like to sit here, five cops, five times,
the cops passed over there.
Yeah, I know Tony, I'm sorry about that.
I am standing here with the car, and...this ain't
my car. I do not give a shit but...
Do you think that he can advance us some money for
the machine guns?
Tony, he says if you can give him a little money
for the machine gun?

TONY BOCCHICHIO When you deliver the money...
the money.

JOSE JAHIR URIBE Okay.

AUGUSTO SANCHEZ When you deliver it to him...
(In English)

TONY BOCCHICHIO You know that. I do not pay...When you give me...
I give you the cash.

JOSE JAHIR URIBE Because I have other business, I don't have now...
(In English) Okay.

TONY BOCCHICHIO What can I say, I mean...

JOSE JAHIR URIBE &
AUGUSTO SANCHEZ (INAUDIBLE)
(in Spanish)

TONY BOCCHICHIO I, I do not want to get... nobody is going to fuck
me, let me put it that way to you.

AUGUSTO SANCHEZ Okay, okay, no, no he wants he wants to do a lot,
(in English) a lot of business with you.

TONY BOCCHICHIO Alright, fine.

AUGUSTO SANCHEZ I told you... he likes you. Okay.
(in English)

TONY BOCCHICHIO I know. I like him, but I have to see the
merchandise like this. You bring me the merchandise
and I give it to you and we have no problems, fine,
no problems.

JOSE JAHIR URIBE Okay.

TONY BOCCHICHIO Okay

AUGUSTO SANCHEZ Tony, ...

TONY BOCCHICHIO Good bye, take care.

AUGUSTO SANCHEZ Thank you very much.

TONY BOCCHICHIO You are welcome...

AUGUSTO SANCHEZ Tony, sorry I keep you waiting...

TONY BOCCHICHIO All right, go ahead.

JOSE JAHIR URIBE Okay

N O I S E S

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

-against- :

JOSE JAHIR URIBE :

73 CR 78

Defendant :

-----x

United States Courthouse
Brooklyn, New York

September 30, 1974
10:00 a.m.

B e f o r e

HONORABLE THOMAS C. PLATT,

U. S. D. J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: CAROL AMON, Esq.
Assistant U.S. Attorney

GEORGE SHEINBERG, Esq.
Attorney for Defendant

Also Present:

MS. MARGARITA MENSA
Official Spanish Interpreter

1 (A jury was duly impaneled and sworn.)

2 THE COURT: Ladies and gentlemen, we're going
3 to break for the day because of reasons of counsel
4 and other reasons. We'll start promptly tomorrow
5 morning at ten o'clock. You'll report to this
6 jury room, which the Clerk will show you, next
7 door here. If you could be here, say, at ten
8 minutes of ten, so that none of you keep each
9 other waiting or anybody else waiting, it would
10 be very helpful.

11 Let me say one or two quick things to you
12 before you go: Those of you who have served as
13 jurors before, this may be repetitious, but please
14 pay attention.

15 I'm going to instruct you, and indeed direct
16 you not to discuss this case at any time prior to
17 the time when it is submitted to you after the
18 charge is given on the law. That instruction is
19 a mandatory one. It goes with you at all times,
20 both at home or in the restaurants when you're having
21 lunch with one another or somebody else or indeed,
22 even when you are in the jury room during recess,
23 amongst yourselves.

24 I don't want you to discuss the case.
25 I want you to keep an open mind throughout the

1 case and not discuss the case at all until after
2 the case is given to you.

3 It's wrong to discuss it before that point
4 in time when all of the evidence is in. You have
5 to keep your minds open, listen to all the evidence,
6 and look at all the exhibits, and at that point
7 start discussing the case, but not before.

8 That's a firm rule. When I say "Don't
9 discuss the case," I mean it in that sense. Don't
10 discuss it with your husband, your children, your
11 relatives, your friends--anybody. Keep your own
12 counsel until the case is over.

13 The clerk will show you the jury room, so
14 you know where to report tomorrow at ten of ten.
15 Thank you.

16 JUROR NO. 3: Might I ask a question?

17 THE COURT: Yes.

18 JUROR NO. 3: What's the name of the judge
19 presiding?

20 THE COURT: My name is Platt.

21 JUROR NO. 3: Thank you.

22 (The jury leaves the courtroom.)

23 THE COURT: If either of you have any
24 specific requests to charge that you would like
25 me to have, I would like to have them tomorrow

1 morning, but I'll take them any time.

2 MR. SHEINBERG: I'll attempt to get them
3 to you tomorrow morning.

4 MS. AMON: Your Honor, prior to trial we
5 can resolve the issues that are contained in the
6 memorandum as submitted, the issues as to the use
7 of the transcript.

8 THE COURT: I don't really see how a
9 transcript can be excluded, in light of the language.

10 MR. SHEINBERG: Not admitted into evidence.

11 THE COURT: The jury is not going to be
12 able--

13 MR. SHEINBERG: Your Honor--

14 THE COURT: Let me put it this way to you:
15 I will mark them for identification and instruct
16 the jury that if they wish any portions of the
17 transcript of the tapes, rather, replayed to them,
18 they may have it replayed with the assistance of
19 the transcript at the time.

20 MR. SHEINBERG: But not to take them to the
21 jury room.

22 THE COURT: I will not let them take it in.
23 Otherwise, it's like taking the portion of his
24 typed up record (indicating the reporter) with that.
25 I think that's the proper rule. In other words,

1 they can't take the transcripts as such as an
2 exhibit into the jury room. I'll say to them if
3 they wish to have any portions of it re-read after
4 they retire, they can have it.

5 MS. AMON: Then they can have the transcript
6 returned.

7 MR. SHEINBERG: Together with the tape.

8 THE COURT: That's right.

9 MR. SHEINBERG: Further, there has been a
10 request made by the defendant, by myself, with
11 respect to any prior record or prior criminal
12 record of one of the people, the Government
13 witnesses, Mr. Sanchez. I would like that
14 furnished to me as soon as possible.

15 THE COURT: Any reason why that can't be
16 done?

17 MS. AMON: Yes, your Honor. I can get
18 those documents now. I would like to show them
19 to you, turn them over to defense, and argue
20 against their use, because of the nature of the
21 documents that I do have.

22 We have a copy of a criminal record from
23 Colombia; however, there seems to be a great deal
24 of inaccuracies in this record, checking it against
25 other documents that the defendant has; so I think

1 the use of this record is very questionable.

2 I think its validity is extremely questionable.

3 The record also reflects, your Honor, that
4 there are arrests and no convictions are reflected
5 on the records that we have.

6 THE COURT: If there is no convictions,
7 there's nothing he can inquire about.

8 MS. AMON: I don't feel they can be used in
9 cross-examining this witness.

10 THE COURT: They can't.

11 MR. SHEINBERG: As far as, No. 1, going to
12 the use of criminal record which the witness claims
13 is inaccurate--

14 THE COURT: If there is no convictions,
15 it's academic.

16 MR. SHEINBERG: There are convictions.
17 There are some convictions, some arrests. I can
18 go into the underlying factors of the arrest. I'm
19 precluded from going any further by the witness's
20 answers, but certainly, if I have a record which
21 indicates that Mr. So-and-so was arrested on
22 July 15th, at Broadway and 53rd Street for hitting
23 an old lady over the head with an umbrella, I can
24 go into those underlying facts. If he says no,
25 I'm precluded. If he says yes, I'm not precluded.

1 THE COURT: You're bound by his answers.

2 MR.SHEINBERG: Of course I am. That's the chance
3 I take, obviously. It's a calculated chance which
4 I may or may not take, but certainly with respect
5 to convictions, I think I'm entitled to impeach
6 their ace witness's credibility.

7 MS. AMON: There are no convictions that our
8 records show, your Honor.

9 THE COURT: Let me see.

10 MS. AMON: We have copies of this, your
11 Honor. This is the original that we received.
12 However, the copies do not Xerox because of the
13 nature of the paper.

14 (Ms. Amon hands paper to the Court.)

15 MR. SHEINBERG: He has no convictions.

16 THE COURT: She says he has no convictions.

17 MR. SHEINBERG: What was he doing in jail
18 for eight months for killing someone?

19 THE COURT: He may have been held over.

20 MR. SHEINBERG: I think I have a record which
21 indicates conviction for it.

22 MS. AMON: There are no convictions as far
23 as our records reflect.

24 (A second document is handed to the Court
25 by Ms. Amon.)

1 MR. SHEINBERG: What about the murder?

2 MS. AMON: No conviction. Our records reflect
3 there was never a conviction.

4 MR. SHEINBERG: How long was he in jail?

5 MS. AMON: He was released on November 1966.

6 MR. SHEINBERG: Came to the United States.

7 MS. AMON: Came to the United States, but
8 not immediately.

9 MR. SHEINBERG: He has not been arrested?

10 THE COURT: Wait a minute. The warrant of
11 arrest was requested but that's all. He may not
12 even know about this.

13 MR. SHEINBERG: About a warrant of arrest?
14 Your Honor--

15 THE COURT: Assuming it's the same fellow.

16 MR. SHEINBERG: Your Honor, I have a record
17 with respect to this individual that goes about two
18 pages. I would like to verify it. It's from
19 South America. It does indicate substantial
20 arrests--

21 THE COURT: Do you have a certified copy?

22 MR. SHEINBERG: I have a copy, but it's not
23 certified.

24 THE COURT: Judgment of convictions.

25 MR. SHEINBERG: It's like a sheet indicating
all his various nefarious activities.

1 THE COURT: Do you have a certified copy of
2 a judgment of conviction? Otherwise it's not
3 admissible. I'm not going to give you what the
4 Government has. If the Government wants to give
5 you that, that's their prerogative, but there's no
6 convictions shown on that.

7 MR. SHEINBERG: I would like to go over that
8 with Miss Amon. If there is no arrest, then some-
9 thing is in error.

10 THE COURT: Maybe.

11 MR. SHEINBERG: Somewhere. There's a slip
12 between--- you know.

13 MS. AMON: We have no record of convictions
14 and you have no record of convictions.

15 MR. SHEINBERG: Unfortunately, they were
16 turned over to me by the U.S. Attorney's office,
17 a long time ago, in Spanish.

18 THE COURT: I can't read it. We have the
19 translator here.

20 MR. SHEINBERG: It's written out. I can have
21 it typed up for you. Also, Ms. Mensa is here.
22 She can state it right to the Court.

23 THE COURT: What is the purpose of this
24 discussion at this point? To get a prior ruling
25 from me?

1 MR. SHEINBERG: Yes. The purpose simply
2 is this, your Honor: Prior to this day I had
3 requested this record from Ms. Amon and for some
4 reason she did not give it to me, and she said she
5 was going to make an application to the Court to
6 preclude me from having it if there was one.

7 I felt in my cross-examination of the
8 witness, since he is a Government witness, his
9 credibility would be in issue.

10 I think this is a very substantial part of
11 his credibility.

12 MS. AMON: I would like to correct that for
13 the record for a moment. We discussed this matter,
14 I believe, at the audibility hearing held before
15 Judge Neaher. At that time the Government was
16 not intending to call this particular individual as
17 a witness. Defense indicated that he would call
18 him as a witness, at which point it would be the
19 defense witness. I made the statement before Judge
20 Neaher at that time that I did not see any reason
21 or any requirement on behalf of the Government to
22 turn over any criminal record considering at that
23 time he was a defense witness.

24 MR. SHEINBERG: That is correct.

25 MS. AMON: I never said he would be a

1 Government witness--

2 MR. SHEINBERG: If he were a defense witness,
3 he would not be a helpful defense witness.

4 THE COURT: The question is, are you willing
5 to give him what you have?

6 MS. AMON: I'm willing to show him what we
7 have. What I have and what I will show to Mr.
8 Sheinberg reflects no convictions. Therefore
9 I don't see how he can use it.

10 THE COURT: It might be questionable whether
11 you can use it, since he wasn't physically arrested.

12 MR. SHEINBERG: Fine. We'll go over that.

13 THE COURT: What's the other request? The
14 audibility of the tape has been ruled on.

15 MR. SHEINBERG: Correct.

16 THE COURT: The admissions he has made have
17 been held voluntary, as I understand it, and the
18 request, the typed transcripts, my present inclina-
19 tion is-- Well, what else do we have open?

20 MS. AMON: I want to say on the question of
21 the use of the transcript, that there is authority
22 for the use of a transcript and the fact that it is
23 introduced into evidence, that the jurors can use
24 it in their deliberations. Now, granted that is
25 generally the case where there has been a stipula-

1 lation as to the accuracy of the transcript,
2 however, in this case the transcript represents
3 something a little more than simply an aid. In
4 the way it is both the transcript and the transla-
5 tion of the portions of the tape they hear in Spanish.

6 THE COURT: What harm would it do, and
7 wouldn't it protect the Government's interest if
8 as long as every time the tapes were played or
9 replayed they had the use of the transcript? The
10 cases go both ways, as I recall. I had this case
11 in the Gary Trotta trial. Indeed, the Government
12 was willing to even concede on the replays they
13 wouldn't even let the jury use them as an aid on
14 replays. I think-- Here, they have to use them on
15 the re-plays because of the translation problem.
16 I think this would be sort of a middle course to
17 follow. That's my first reaction. I'll look at
18 the cases you cite. If I change my mind, I'll let
19 you know.

20 MS. AMON: Thank you.

21 MR. SHEINBERG: That's it? Ready for
22 tomorrow.

23 MS. AMON: Yes.

24 THE COURT: Ten o'clock.

25 Yes, the only other question is this question

1 of-- You want the entire transcript and the agent
2 to be able to explain what the other conversations
3 were about.

4 MR. SHEINBERG: That is so.

5 THE COURT: Do you have an objection?

6 MR. SHEINBERG: Other conversations? I cer-
7 tainly would object.

8 THE COURT: Wait a minute. There's material
9 on this tape that relates to other facts other
10 than these three or four guns that are in the indict-
11 ment.

12 MR. SHEINBERG: I would think not. In listen-
13 ing to the tape at the audibility hearing, the only
14 thing that related in reading the transcript which
15 is furnished by Ms. Amon, the only thing related to
16 is this particular transaction. I'm requesting the
17 Court to keep it within this particular transaction.

18 THE COURT: Miss Amon says there is material
19 on this tape that relates to other guns.

20 MS. AMON: There are statements made on the
21 tape recording and they are translated on the
22 transcript which refer to samples to other things, to
23 other conversations--

24 MS. SHEINBERG: Not in the transcript that
25 I was furnished and not on the tape we heard before

1 Judge Neaher in the audibility hearing.

2 MS. AMON: Mr. Sheinberg, on the tape, for
3 instance, the agent will make a statement, "Because
4 of the other things I'd be willing to go along with
5 this." As a matter of fact, this is particularly
6 pertinent on the points of entrapment because the
7 agent says at one point, "It's only because of the
8 other things that I'm going to buy these guns. I'm
9 not interested in these guns."

10 MR. SHEINBERG: If it's on this transcript
11 it will have to go in.

12 THE COURT: The question is she wants to
13 let the agent explain how that conversation was,
14 what it's about.

15 MR. SHEINBERG: I object to that.

16 THE COURT: The fact is if these were related
17 to guns and they were close in point of time, they
18 can be admitted for the purpose of showing intent,
19 if nothing else. Also, perhaps to make negative any
20 entrapment.

21 MR. SHEINBERG: If it's related to any other
22 transaction, it's detrimental to the defendant with
23 respect to this particular incident -- assuming the
24 officer or undercover agent testified to the fact
25 that he had dealings with Mr. Sanchez and my client

1 with respect to narcotics--

2 THE COURT: I'm not talking about narcotics;
3 I'm talking about guns.

4 MR. SHEINBERG: Specifically guns? I would
5 object--

6 THE COURT: Similar crimes and close in time,
7 to prove intent.

8 MR. SHEINBERG: With my client? Conversations
9 with Mr. Uribe?

10 MS. AMON: The payment for the fifth gun,
11 the conversation is about the machine guns.

12 MR. SHEINBERG: That's in the transcript.

13 MS. AMON: Yes.

14 MR. SHEINBERG: He's going to explain the
15 conversations about the machine gun.

16 MS. AMON: He will, for instance, explain
17 such things as occasionally "other things" used.
18 Testimony may come out about machine guns. It's
19 closely connected, as his Honor said, in time and
20 event with the present deal, so the payment for the
21 fifth gun would come out. The conversations about
22 the machine guns would come out.

23 MR. SHEINBERG: Conversations with Uribe?

24 MS. AMON: That's right.

25 MR. SHEINBERG: Between Uribe and the under-

1 cover agent.

2 MS. AMON: Between Uribe and the first
3 witness, the informant.

4 MR. SHEINBERG: Without transcripts, Agent
5 Bocchichio, if I may go a step further, testified
6 he does not understand Spanish. I wouldn't know
7 how he could possibly testify as to what Mr. Uribe
8 said.

9 MS. AMON: He himself mentions machine guns.
10 He has knowledge of it. The agent himself questions
11 in the transcript the defendant and asked, "What
12 about the other things, or the machine guns?" to
13 which the defendant, I believe in this particular
14 instance, responds in English, "That will be next
15 week." There is discussions where the defendant
16 asked for an advance on the machine guns. This
17 is highly relevant in the text of the conversations
18 itself and particularly relevant to entrapment
19 defense.

20 THE COURT: Is there entrapment?

21 MR. SHEINBERG: There might very well be;
22 from what this is turning out. There might be a
23 serious question of entrapment.

24 THE COURT: Under those circumstances, I think
25 maybe, one of the three grounds, negative entrapment,

1 two, to prove intent, and three, part of the res
2 gestae.

3 MR. SHEINBERG: We have no idea when this
4 thing took place.

5 THE COURT: The conversations were all at
6 the same time, and they all related to these differ-
7 ent events. It may well be.

8 MR. SHEINBERG: We should have a ruling
9 beforehand. If a conversation took place at some
10 period of time before this incident which is too
11 great a period of time, it would be a question
12 of being -- prejudicing the defendant.

13 THE COURT: It's admissible on the ground to
14 prove intent and negative entrapment, and particularly
15 to prove intent unless it was several years before-
16 hand.

17 MR. SHEINBERG: Going to the point of intent,
18 having the agent testify as to conversations with
19 the defendant when he doesn't understand Spanish,
20 when we have no transcript of those conversations,
21 and I understand--

22 MS. AMON: This is the transcript, the conver-
23 sation with the agent.

24 MR. SHEINBERG: He's going to explain what
25 he meant. You see the conversation with the agent

1 has been ruled upon. We have a transcript of that.

2 THE COURT: I assume when he explains what
3 he means, assuming something now that he is explain-
4 ing by virtue of something that the defendant and
5 he discussed two or three days before or maybe they
6 weren't on tape.

7 MR. SHEINBERG: Then he certainly can testify
8 as to what he did.

9 THE COURT: What they said two or three days
10 before.

11 MR. SHEINBERG: If the agent testifies, what
12 he said, what was said to him. I can't argue with
13 that. That's a witness. I certainly would argue--
14 Well, that's something else. I would argue the
15 fact of the transaction is outside of the weapons.

16 THE COURT: Unless they are connected -- if
17 it's connected and clear from the connection that
18 they relate to other offenses, at or about the
19 same time, or gun offenses, then I'll allow it.

20 MR. SHEINBERG: I can't stop the Court from
21 allowing it. He's a witness. If he spoke to the
22 defendant about guns two days before, it would be
23 incredible to say that's inadmissible. Certainly if
24 he spoke to him about narcotics, that would be in-
25 admissible.

1 THE COURT: Unless it's tied in some way
2 with the guns.

3 MR. SHEINBERG: I don't think that's the case.

4 THE COURT: That's not really a similar
5 offense, narcotics.

6 MR. SHEINBERG: Especially conspiracy.

7 THE COURT: Unless all part of a single
8 operation, run guns and narcotics together.

9 MS. AMON: It was the same individual
10 defendant involved with the same Government agent
11 and the same informant and one contemporaneously
12 dealing in narcotics and machine guns, one not
13 necessarily dependent upon another.

14 THE COURT: Stolen narcotics.

15 MS. AMON: Conspiracy for narcotics. In
16 other words, the testimony would be that they were
17 dealing and making a plan to import narcotics, these
18 individuals.

19 THE COURT: How can you conspire with a
20 Government agent to import--

21 MS. AMON: There was a third person involved.

22 MR. SHEINBERG: Who is a Government agent.

23 MS. AMON: No, a totally different third
24 person who was not involved with the guns.

25 THE COURT: That troubles me. Frankly, if

1 you had charged him with conspiring to move narcotics,
2 that was one thing. You haven't charged him with
3 that. That's not necessarily intent to smuggle arms,
4 to sell arms.

5 MS. AMON: What about as to negate the entrap-
6 ment defense?

7 THE COURT: We may have to hold it to see
8 what he's going to urge.

9 MS. AMON: In that event, you would permit any
10 cross-examination surely, but any direct testimony
11 explaining it in-- actually explained from the
12 context of the tape?

13 THE COURT: I'll wait to rule on that when the
14 time comes. We'll see how far Mr. Sheinberg has gone.

15 MR. SHEINBERG: Thank you very much, your
16 Honor, for your courtesy and tomorrow at ten o'clock.

17 THE COURT: Yes.

18 MR. SHEINBERG: Might I obtain from the Court
19 a certificate indicating my engagement.

20 THE COURT: Yes.

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TRANSCRIPT OF APPELLANT'S SENTENCING (DECEMBER 13, 1974)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-against- :

73-CR-780

JOSE JABIR URIBE, :

Defendant :

-----X
United States Courthouse
Brooklyn, New York

December 13, 1974
10:00 o'clock A.M.

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

CRIMINAL CAUSE FOR SENTENCING

IRA RUBENSTEIN
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: ANTHONY SCHALL, ESQ.
Assistant U.S. Attorney

GEORGE SCHEINBERG, ESQ.
Attorney for Defendant

1 (The Court Interpreter is sworn Emil C.
2 Rodriguez.)

3 THE COURT: Mr. Scheinberg, is there reason
4 why I shouldn't proceed with sentencing?

5 MR. SCHEINBERG: No legal reason why sentence
6 should not be imposed.

7 THE COURT: Mr. Uribe, do you know of any
8 reason why sentence should not be imposed?

9 THE INTERPRETER: No, your Honor.

10 THE COURT: Mr. Scheinberg, you want to say
11 something?

12 MR. SHEINBERG: Yes. I had an opportunity to
13 go over the Probation Report and in substance was
14 stated in there with respect to Mr. Uribe's personal
15 background, seems correct and adequate. One thing I
16 must call to your Honor's attention, your Honor has
17 probably gone over it quite thoroughly with respect to
18 the narcotics implications in the Probation Report.
19 I must state to the Court that Mr. Uribe has at all
20 times when I represented him in those matters, stated
21 to me his total innocence which was borne out by the
22 dismissal by the United States Attorney's office of
23 any narcotic charges against him.

24 Coming to the instant charge that we have
25 before the Court, your Honor was present during the

1 trial which was a rather short trial and I assume
2 that you remember most of the facts and details.
3 Mr. Uribe has resided in the United States for a
4 number of years. He's a legal permanent resident in
5 the United States and he has opened a business here
6 and he has remained in business for a number of years.

7 As your Honor has read attached to the Pro-
8 bation Report are a number of letters from various
9 business associates, friends who would have testified
10 to Mr. Uribe's character and attested to Mr. Uribe's
11 reputation in the community, which he lives and which
12 I may say, he has worked. Mr. Uribe has owned a
13 business, the tailor shop on Roosevelt Avenue for a
14 number of years. He has tried to make a mark in this
15 community as a citizen, not as a citizen but as a
16 permanent resident of the United States.

17 The major concern about this entire situation
18 was the fact that he might lose his residency because
19 of this conviction. What's more important to him, he
20 may not be able to become a United States citizen,
21 which he wishes. Consider all these factors; consider
22 his background; consider what the Probation Report has
23 said and by his prior involvement with the law which
24 doesn't exist. Consider his opportunity which he has
25 made for himself in the United States by becoming a

1 business man and by doing something for himself.
2 I would request as much leniency as possible in light
3 of the conviction on this most serious charge.

4 THE COURT: Well, Mr. Uribe, do you wish to
5 say anything in your own behalf?

6 THE INTERPRETER: No, your Honor.

7 THE COURT: Well, Mr. Scheinberg, I have read
8 all the letters that have come in on behalf of Mr.
9 Uribe. As you have pointed out, I did sit on the trial
10 in this case and I, despite Mr. Uribe's maintenance of
11 his innocence, I did hear the tape along with the
12 members of the jury and I don't think that the verdict
13 was an improper one, given the contents of that tape.
14 I don't think that this is a case that can go without
15 punishment. I have taken into account that he has had
16 no record before and I had disregarded the prior in-
17 cidents where he was involved in this Court and made
18 up my mind as if there had been no record at all.

19 MR. SCHEINBERG: I thank you for that, your Honor.
20 I had to allude to that.

21 THE COURT: I understand, but I feel where there
22 is a lack of evidence the charges are dismissed that
23 means the Government doesn't have any proof and I
24 judge in that line.

25 But under all of the circumstances, it is the

1 judgment pursuant to 18-USCA-3651 that the defendant
2 is hereby remanded to the custody of the Attorney-
3 General or his authorized representatives for im-
4 prisonment for a term of four years on condition that
5 the defendant be confined in a jail-type institution. for
6 six months.
7 The execution of the remainder of the sentence is
8 hereby suspended and he is placed on probation for a
9 period of three and a half years. The defendant shall
10 pay a fine in the sum of \$1,000 in a lump sum or in
11 installments arranged through the Probation Department
12 of the Eastern District of New York. Of course, as
13 you know, Mr. Scheinberg, I am sure you will explain
14 to Mr. Uribe he has the right of appeal.

15 MR. SCHEINBERG: Yes.

16 THE COURT: Having gone to a trial.

17 MR. SCHEINBERG: I am going to request that at
18 this time, your Honor. The first thing I am going to
19 request is a short stay of execution so that Mr. Uribe
20 can dispose of his business. He has a lease and is
21 making arrangements to have it transferred over,
22 which he has been in the process of doing because he
23 understood there might be a jail sentence. I would
24 request a short stay and I would say until the first
25 week in January.

THE COURT: January 6, if that's a Friday.

1 That's a Monday and would you rather have it that
2 Friday?

3 MR. SCHEINBERG: The 6th.

4 THE COURT: Monday morning, January 6th.

5 MR. SCHEINBERG: So, he can dispose of any
6 interests that he hasn't done yet.

7 THE COURT: Start of sentence January 6th,
8 10 a.m. As I recall it, you filed a financial --

9 MR. SCHEINBERG: I asked a Court to direct the
10 Clerk to file notice of appeal on behalf of Mr. Uribe.

11 THE COURT: I beg your pardon?

12 MR. SCHEINBERG: I'll file it then, your Honor.

13 THE COURT: You will file and so, I'll mark it.

14 MR. SCHEINBERG: Yes, I certainly will protect
15 his rights. Thank you very much, your Honor.

16 THE INTERPRETER: Thank you, your Honor.

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LETTER DATED MARCH 17, 1975 TO APPELLANT

RJD:CEA:ald
F.†

March 17, 1975

Mr. Jose Jahir Uribe
98-40 57th Avenue
Rego Park, Queens, New York

Re: United States v. Jose Jahir Uribe
73 CR 780

Dear Mr. Uribe:

The judgment of conviction having been entered on December 13, 1974 and no appeal of said judgment having been filed on your behalf, you are hereby directed to surrender to the United States Marshall for the Eastern District of New York, Room 172, 225 Cadman Plaza East, Brooklyn, New York, at 10:00 A.M. on March 24, 1975.

Upon your failure to appear, steps will be taken to forfeit your bail and a bench warrant will be issued for your arrest.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By _____
Carol B. Amon
Assistant U. S. Attorney

cc:
United States Marshal
Eastern District of New York

George Sheinberg, Esq.
66 Court Street
Brooklyn, New York 11201

CRA FRP 3/17/73

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

against :

JOSE JAHIR URIBE :

73 CR 780

Defendant :

-----x

United States Courthouse
Brooklyn, New York

March 24, 1975
9:45 a.m.

B e f o r e

HONORABLE THOMAS C. PLATT

U. S. D. J.

IRA RUBENSTEIN
Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: CAROL AMON, Esq.
Assistant U.S. Attorney

GEORGE SCHEINBERG, Esq.
Attorney for Defendant.

1 MR. SCHEINBERG: Your Honor, we're before
2 the Court this morning, and I think to clarify some-
3 thing between the Court, myself, and counsel for the
4 United States Government, it is our understanding--
5 and I think the record reflected that at the time
6 of sentencing of Mr. Uribe and even thereafter, at
7 the time of the filing of a formal motion, a notice
8 of appeal was filed on behalf of Mr. Uribe.

9 Since I was assigned counsel at the trial,
10 not having received any scheduling from the Circuit
11 Court of Appeals, and Miss Amon and myself checked, and
12 we discovered that no notice of appeal had been filed
13 or was in the file.

14 Hence, of course, Miss Amon was under an
15 obligation to file a surrender letter, which she did.

16 Mr. Uribe appeared today with me, and I had
17 called your chambers and offices on Friday after
18 receiving the surrender letter. We have determined
19 that there is nothing in the file with respect to
20 a notice of appeal.

21 MISS AMON: That's correct, your Honor.
22 I checked the docket sheet and there was no notice
23 of appeal filed there.

24 THE COURT: Well, has anybody checked the
25 record on the date of sentence?

1 MRS. AMON: Mr. Scheinberg contacted me when
2 I filed the surrender letter.

3 MR. SCHEINBERG: What happened, your Honor,
4 when we --

5 MRS. AMON: I thought Mr. Scheinberg had
6 ordered the records of the minutes of the sentence.

7 MR. SCHEINBERG: I'm going to order them, your
8 Honor, but I think I filed a formal motion with the
9 court after that date, and the formal motion is in
10 the file, where I had requested certain relief.

11 I also requested relief with respect to the
12 continuation of the bond for Mr. Uribe pending the
13 appeal. This was granted by the Court.

14 MRS. AMON: That was relief inconsistent with
15 filing notice of appeal, since it was technically in
16 the nature of the Rule 35 motion, which would have
17 been filed after the judgment of conviction was
18 affirmed.

19 MR. SCHEINBERG: Two portions of that motion,
20 we had two specific motions, and one was directed
21 toward the sentence, the other was directed toward
22 the continuation of the bond for Mr. Uribe.

23 Instead of filing two separate, distinct
24 motions, one was filed incorporating requests for
25 both reliefs.

1 THE COURT: The question running through my
2 mind, is there anything more? Do I have the power
3 to extend your time?

4 MRS. AMON: Your Honor, I think under the
5 research that I have done, under Rule 4--is that
6 after the 30-day period has expired a District Court
7 does not have jurisdiction to extend the time past
8 that period. After ten days, sometimes some pro-
9 vision for excusable negligence, which will extend
10 to thirty days past that, the District Court does--

11 MR. SCHEINBERG: My only remedy would be at
12 this time, would be to obtain the transcript of the
13 record of sentencing and filing a formal motion with
14 the Circuit Court, requesting that the notice of
15 appeal be reinstated or instated at date of sentencing.

16 MRS. AMON: I believe the only thing that
17 would remedy it, if the record of the sentencing
18 shows the District Court directed the Clerk to file
19 the notice of appeal and this wasn't filed--

20 THE COURT: That's my recollection. I couldn't
21 say for sure unless I saw the transcript, and unless
22 Mr. Duncie's docket entry shows what the docket entry
23 may show, you know I directed the notice of appeal
24 be filed.

25 MRS. AMON: If that's not the case, then your

x 1 Honor simply it is a case of Circuit Court Appeals
2 not having jurisdiction over the appeal, unless that
3 was done. If Mr. Scheinberg did not take steps to file
4 notice of appeal at this time, the Court simply does
5 not have jurisdiction both mandatory and jurisdic-
6 tional.

7 THE COURT: I can't find the rule. In ten
8 days after entry of judgment order -- I checked the
9 box here and the information as notice of appeal be
10 filed pursuant to defendant's request. Yes.

11 So I obviously I did direct notice of appeal
12 be filed. It was just inadvertence on the part of
13 the Clerk if it hasn't been filed. My answer is
14 clear on this thing: notice of of appeal has been
15 filed pursuant to defendant's request, and the answer
16 is yes.

17 I signed it on December 13th, so I think
18 you're protected.

19 MR. SCHEINBERG: What do I do now? How do
20 I get this thing moving because the appeal, I would
21 like to conclude it.

22 THE COURT: Yes, I understand, and I think
23 you'd better order the record, or make sure that the
24 direction is on the record, but I think it's clear.
25 We'll just have to-- Let me see. Well, it says,

1 "clerical mistakes, in rulings, motions, orders and
2 other parts of the record arising from oversight or
3 omissions may be corrected by the Court any time
4 after such notice..." It seems to me it could be
5 a clerical mistake here. Since the clerk didn't
6 enter an order, enter a file notice of appeal pur-
7 suant to the Court's direction, I'll direct that
8 such notice of appeal be filed as of December 13,
9 1974.

10 MRS. AMON: Your Honor, do you want to await
11 the record of the sentencing to determine --

12 THE COURT: I don't think I need do it.
13 I will wait if you wish that be done, but I think
14 it's clear here that I so directed it. From my
15 instructions, and it's both signed by me and
16 Mr. Duncney.

17 There wasn't any question in my mind that
18 the notice of appeal was to be filed by that day.
19 We both looked at it. You can order the transcript
20 and check it if you want, but I think regardless of
21 what the transcript says, I don't think it's going
22 to change the picture.

23 MRS. AMON: Definitely, but the Court opposes,
24 too -- Understanding that defense counsel would have
25 filed it.

1 THE COURT: No.

2 MRS. AMON: Just --

3 THE COURT: The Clerk files it.

4 MRS. AMON: But this establishes that you
5 directed him to do so.

6 THE COURT CLERK: Yes.

7 THE COURT: So it was an act of omission on
8 his part. I don't see why that can't be corrected
9 right now, but let's order the record to make sure.

10 MR. SCHEINBERG: Well, your Honor--

11 THE COURT: What else can I do for you?

12 MR. SCHEINBERG: Your Honor, if I may-- there
13 is a surrender date for Mr. Uribe. We'd like to
14 have a continuation on bail pending this determination

15 THE COURT: Yes.

16 MR. SCHEINBERG: He has appeared and I have
17 brought him in today. He was in Friday and--

18 THE COURT: That's permissible. I will allow
19 it.

20 MR. SCHEINBERG: What do you have to tell the
21 marshals?

22 THE COURT: Are they not here?

23 MR. SCHEINBERG: He comes in with me.

24 MRS. AMON: Supposed to surrender downstairs
25 to the marshals at ten.

1 THE COURT: Mrs. Amon can tell the marshals.

2 The order for surrender, be continued on bail and
3 pending appeal.

4 MR. SCHEINBERG: Thank you very much for
5 your courtesy.

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RJD:CA:jom
F.# 733,632

April 2, 1975

Honorable Thomas C. Platt
United States District Judge
United States Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Uribe, 73 CR 780

Dear Judge Platt:

On March 24, 1975 your Honor expressed the opinion that the Notice of Appeal in this case had been timely filed because of your belief that the Clerk of the Court had been directed by your Honor to file the Notice of Appeal on the date of sentencing and that the failure of the Clerk to file said notice could be deemed a clerical mistake which could be corrected by the Court under Rule 36 of the Federal Rules of Criminal Procedure.

I have enclosed herewith the minutes of sentencing of December 13, 1974, which were recently obtained from the court reporter. The colloquy on page 7 of the minutes conclusively shows that your Honor did not direct the Clerk of the Court to file a Notice of Appeal on behalf of Mr. Uribe. To the contrary, Mr. Sheinberg, counsel for defendant, expressly stated to the Court that he would file the Notice of Appeal. Of course, no Notice of Appeal was filed and we continue to adhere to our view that your Honor is without authority now to permit the defendant to file a Notice of Appeal.

Honorable Thomas C. Platt

- 2 -

April 2, 1975

If your Honor deems it appropriate, we have no objection to this letter being treated as a motion for reargument pursuant to Rule 9(m) of the General Rules by the United States District Court for the Eastern District of New York.

Very truly yours,

DAVID G. TRAGER
United States Attorney

By:

CAROL AMON
Assistant U. S. Attorney

Enclosure

cc: George Sheinberg, Esq.
66 Court Street
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA :

-against- :

75-CR-110

GORDON KING, :

Defendant. :

-----x

United States Courthouse
Brooklyn, New York

April 4, 1975

CRIMINAL CAUSE STATUS REPORT

B e f o r e :

HONORABLE THOMAS C. PLATT, U.S.D.J.

IRA RUBENSTEIN
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: CAROL AMON, ESQ.
Assistant United States Attorney

GEORGE SHEINBERG, ESQ.
Attorney for the Defendant

1 THE COURT: Returnable on the 18th.

2 Now, while I have you both here, have you
3 resolved your Uribe dispute?

4 MR. SHEINBERG: I thought it was resolved.
5 I received --

6 THE COURT: I got a letter from Ms. Amon the
7 other day. I was about to say, Ms. Amon saying she
8 disagrees with you.

9 MR. SHEINBERG: Judge, I spoke with Ms. Amon
10 and I haven't -- I should get it in the morning late
11 mail -- I haven't been back to the office. What
12 we had discussed on the phone, to indicate a notice of
13 appeal will be filed.

14 Now, when I say I would file a notice of appeal,
15 I had pursuant to your Honor's instruction, I had
16 told the Clerk to give me the necessary forms. That's
17 what I meant.

18 THE COURT: As I pointed out to Ms. Amon, even
19 though I don't think I was communicating on the phone
20 as to whether there was a financial statement and
21 that's what I was asking about. You, apparently
22 thought I was suggesting filing notice of appeal.

23 MR. SHEINBERG: Yes.

24 THE COURT: But I wasn't even suggesting that
25 you file a notice of appeal because Mr. Duncney

1 normally Mr. Dunccey files that notice of appeal. I
2 pointed this out to Ms. Amon and she said she would
3 discuss it with you.

4 MR. SHEINBERG: With me?

5 THE COURT: She's giving that cold hard look.

6 MR. SHEINBERG: She always gives that to me.

7 MS. AMON: Your Honor, I had sent the letter
8 with the transcript to Mr. Sheinberg. I hadn't
9 discussed it with him in the meantime. I assumed he
10 had received it and apparently has not received the
11 letter and transcript.

12 THE COURT: Are you going to object to the
13 Court's filing of the notice of appeal?

14 MS. AMON: Well, your Honor, at this time if
15 the Government was prepared to argue this further in
16 proper form, we would argue if such a decision would
17 be made at the Court of Appeals.

18 THE COURT: I think that's where you better
19 argue it.

20 MS. AMON: Thank you very much.

21 THE COURT: And you, as far as I'm concerned,
22 I have no such intention that you were to file.

23 MR. SHEINBERG: I don't -- I don't know if I
24 can. I was assigned counsel in the case.

25 THE COURT: That's right. In any event, that

1 was the Clerk's responsibility. I so indicated on
2 the form that he handed to me. He admits it was his
3 responsibility but he's like all the rest of us, he
4 makes mistakes.

5 MR. SHEINBERG: Not always.

6 MS. AMON: Generally, though, your Honor, I
7 think it would be considered, I understand what you
8 are saying with respect to the case. I think
9 generally it's the responsibility of the attorney
10 handling the case to file notice of appeal according
11 to the rules and not necessarily the Clerk.

12 THE COURT: That's true in a case of the CJA
13 cases.

14 THE CLERK: No. I have to still be instructed
15 because CJA could come down and file notice of appeal
16 but usually I get the instruction.

17 MR. SHEINBERG: I was assigned throughout that
18 case.

19 THE COURT: All right. What date did we put
20 on this?

21 MR. SHEINBERG: April 18th at 2:00 p.m. The
22 motion paper is to be filed this week.

23 MS. AMON: Thank you.

24 MR. SHEINBERG: Thank you very much, your Honor.

25 * * *

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 23rd day of June 19 75 he served ^{two copies} ~~copy~~ of the within

Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

George Sheinberg, Esq.

66 Court Street

Brooklyn, N. Y. 11201

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

23rd day of June 19 75

Olga S. Morgan
OLGA S. MORGAN
Notary Public, State of New York
No. 24-501966
Qualified in Kings County
Commission Expires March 30, 1977